

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

BURTON KIRSTEN,)
)
Plaintiff,)
)
vs.)
)
CAPE ROYALE AT SKI HARBOR)
CONDOMINIUM OWNERS)
ASSOCIATION, INC.,)
)
Defendant.)

Case No. 2:22-cv-04109-MDH

ORDER

Before the Court is Defendant's Motion to Quash (Doc. 68) and Plaintiff's Motion to Compel (Doc. 73). Plaintiff responded in opposition (Doc. 71) to Defendant's Motion to Quash and Defendant replied (Doc. 75). The Court held a telephone conference on the matter (Doc. 76). During the telephone conference Defendant indicated no objection to Plaintiff's Motion to Compel. Plaintiff's subpoena of Witness LOZ Dive LLC and Trevor Dowdney appear to have been properly served (Doc. 73-1 at 33-42). Further, Plaintiff's subpoena appears generally consistent with Rule 26(b)(1), as Defendant's property manager appears to have testified to relying in part on Trevor Dowdney and LOZ Dive LLC's recommendation against the boat cover at issue in this litigation. Accordingly, it is **ORDERED** that LOZ Dive LLC produce documents identified in Plaintiff's subpoena (Doc. 73-1 at 35) no later than June 7, 2023. It is **FURTHER ORDERED** Trevor Dowdney appear for a deposition no later than June 14, 2023. It is **FURTHER ORDERED** that discovery in this matter be extended until June 30, 2023.

As to Defendant's Motion to Quash, this Court finds that a relevant question of fact remains as to the extent to which and how Defendant relied on opinion from Douglas Pluth in prohibiting Plaintiff's boat cover. (Doc. 75 at 2). The Court is also aware, however, that Defendant consulted Mr. Pluth as part of this litigation, though neither party has designated Mr. Pluth as an expert for trial. (Doc. 69 at 3-6). Accordingly, Defendant's Motion to Quash is **GRANTED IN PART AND DENIED IN PART**. Plaintiff may depose Mr. Pluth as a fact witness, but Plaintiff is not permitted to question Mr. Pluth about his expert opinion regarding the specific dock and boat cover at issue in this case. Plaintiff also may not question Mr. Pluth about the content of conversations between Mr. Pluth and Defendant's counsel.

IT IS SO ORDERED.

DATED: May 30, 2023

/s/ Douglas Harpool
DOUGLAS HARPOOL
UNITED STATES DISTRICT JUDGE